FACSIMILE COVER SHEET

TO: **Katherine Rubillard** **312-742-9029**

FROM: JUDGE KATHLEEN PANTLE'S CHAMBERS

PHONE NUMBER: (312) 603-6025

RE: ***Owens v. Police Board of the City of Chicago, et al.*** **16 CH 391**

DATE: July 18, 2016

NUMBER OF PAGES (INCLUDING COVER SHEET): 11

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

MESHAY OWENS	)	
Plaintiff,	)	
	)	**16 CH 0381**
v.	)	
	)	**Hon. Kathleen Pantle**
POLICE BOARD OF THE CITY OF CHICAGO and EDDIE JOHNSON[1], SUPERINTENDENT OF THE CHICAGO POLICE DEPARTMENT	)	
Defendants.	)	

ORDER

Plaintiff Meshay Owens ("Owens") has filed a Complaint for Administrative Review with this Court seeking review of a final decision by the Chicago Police Board ("The Board") to discharge Owens from her position as a Chicago Police officer.

The decision of the Board is affirmed.

Background

Plaintiff Meshay Owens is a Chicago Police Officer with 21 years of experience. R. at 148. On February 9th, 2014, Owens was staying with several family members at the Embassy Suites Hotel in Bloomington, Minnesota. R. at 149. At approximately 2 a.m., officers from the Bloomington Police Department came to her door. *Id.* The officers were responding to a noise complaint. R. at 152.

The parties dispute the following events. When Owens answered the door, she appeared intoxicated, was loud, and questioning why the police were knocking on her door. R. at 153. Owens, however, testified that she had only had three drinks over the course of the day. R. at 208. Owens repeatedly refused the officers' requests that she quiet down and go back to her room. *Id.* After refusing to quiet down, the officers asked her for her identification. *Id.* When she told the officers she did not have any identification, they asked for her name and date of birth. R. at 154. She refused to provide the officers with that information, even after the officers explained

[1] At the time the case was filed, John Escalante was the Interim Superintendent of the Chicago Police Department.

that refusal would lead to arrest. *Id.* The officers warned her three or four times. R. at 164. The disturbance caused by Owens resulted in other guests at the hotel opening their doors and looking out and then closing their doors. R. at 154.

Owens eventually was placed under arrest for obstructing legal process and disorderly conduct. R. at 165. It was only after Owens was removed that Owens' sister made the Bloomington officers aware that Owens was a Chicago Police officer. *Id.* The officers brought Owens to their squad car. R. at 154. The arresting officer claimed that he hoped to remove her from the situation so that she could cool down. R. at 200. Even when she was in the squad car, the officer was not certain he would have to arrest Owens. *Id.* The video camera in the car recorded Owens making statements to the officers such as: "I'm a police officer, duh"; "I hope you sleep real good for this one. Please don't come to Chicago"; and "You wouldn't last a day, wouldn't last a week with the real police."

Owens was processed at the Bloomington Police station. R. at 165-166. Standard procedure required the department to administer a preliminary breath test of Owens' blood alcohol level. R. at 166. Owens refused to cooperate with the test, until the department put Owens' commanding officer on the phone from Chicago and he ordered her to take the test. *Id.* Owens' test results showed a blood alcohol level of .151. R. at 167. Owens eventually pled guilty to disorderly conduct, and received Court probation and a $300 fine. R. at 210.

Under Department rules, Owens was required to file a written report of the incident, but failed to do so. R. at 150. On September 10, 2014, Owens gave a statement to the Department's Bureau of Internal Affairs. In her statement, Owens contradicted the officers' testimony, stating that the officers never asked her to quiet down and stay in her room. R. at 251. Owens stated that the officers never informed her why they were there and why they requested her name. *Id.* She stated that she never refused to go back in her room, and was not loud or causing a disturbance. *Id.* She stated the officers never asked her for identification. *Id.* Owens claimed the officers never told her that she could be charged with obstruction if she refused to give her name. R. at 252. She stated that she was never loud and abusive inside the squad car. R. at 253. Owens stated that, in her opinion, the arresting officer was "overzealous" and "felt he had to arrest [Owens]". R. at 254. The investigating officer, Sergeant Tsoukalas, made several allegations that Owens had made false statements to Internal Affairs. Specifically, Tsoukalas alleged that Owens made a

false report when she stated that the Bloomington officers never told her why they were there or why they needed her name. R. at 261. Tsoukalas alleged that Owens falsely stated that the officers never asked her to quiet down and stay in her room. *Id.* He also alleged that Owens falsely stated that the officers never told her she could be arrested for obstruction if she refused to give her name and date of birth. *Id.* On December 5, 2014, Owens gave a second statement to Internal Affairs. In response to all the false reporting allegations, Owens claimed that she never intentionally made a false statement, but that she had misremembered events, or in one case, that she misunderstood the question. R. at 264-65. When confronted with the video record from the police car, she acknowledged her statements to the officers, but claimed that it was not her intent to be rude and disrespectful. R. at 266.

On or about May 19, 2015, the Chicago Police Superintendent filed charges with the Police Board, asking that Owens be discharged from the Department for violations of various rules. Specifically, Owens was charged with violating Rule 1 (violation of any law or ordinance); Rule 2 (any action or conflict which impedes the Department's policy or goals, or brings discredit upon the Department); Rule 8 (disrespect to or maltreatment of any person, on or off duty); Rule 14 (making a false report); Rule 15 (intoxication on or off duty); and Rule 20 (failure to immediately submit a report that any member is under investigation by a law enforcement agency besides the Chicago Police).

The Police Board met on October 2 and October 5, 2015. After two days of testimony, the Board issued its findings. The Board found Owens not guilty of violating Rule 2 (Count VI) and Rule 14. However, the Board found Owens guilty of violating Rules 1, 2 (Counts I, II, III, IV, and V), 8, 15, and 20. The Board accepted the testimony of the Bloomington officers and found that Owens was intoxicated and uncooperative. She refused to go to her room and be quiet when asked to do so, then claimed she did not have any identification. As she continued to speak loudly and refuse to return to her room, she was asked for her name and date of birth, which she refused to give. The officers told Owens why they needed her name, and that refusal to give it could lead to arrest for obstruction. After numerous attempts to get her to cooperate, the officers handcuffed Owens and took her to a squad car to calm down. In the car, she continued to be uncooperative and abusive to the officers. Despite their reluctance to arrest a fellow police officer, the Bloomington officers finally arrested her for obstructing a peace officer and disorderly conduct. Even after her arrest, she continued to be uncooperative. Much of her

behavior was recorded on video, or stipulated to by the parties. The Board noted that Owens had previous incidents of serious misconduct in her record, including a 7.5 month suspension for making false statements to investigators, and a 10-day suspension for being absent from duty and making a false report to a supervisor. R. at 17. The Board found that, based on these factual findings, and Owens' disciplinary history, discharge was warranted. Owens now seeks judicial review of the Board's findings, conclusions, and recommendation.

Standard of Review

A trial court's review of an agency's decision regarding discharge is a two-step process. *Carrigan v. Board of Fire & Police Comm'rs*, 121 Ill. App. 3d 303, 308 (2d Dist. 1984). First the court must determine if the agency's findings of fact are contrary to the manifest weight of the evidence. *Id.* Second, the court must determine if the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist. *Id.* The findings of the Police Board are held to be *prima facie* true and correct. *Collura v. Board of Police Comm'rs*, 113 Ill. 2d 361, 372 (1986). Where a criminal offense is the basis of the charge before the administrative body, proof of that offense by a preponderance of the evidence is required. *Carrigan*, 121 Ill. App. 3d at 108. The off-duty conduct of police officers is subject to reasonable regulation, and can serve as a cause for discharge. *Kirsch v. Rochford*, 55 Ill. App. 3d 1042, 1045 (1st Dist. 1977).

A court, on administrative review, should not reweigh the evidence to determine where the preponderance lies but limit its inquiry to ascertaining whether the findings and decision of the agency are contrary to the manifest weight of the evidence. *Id.* An agency decision is contrary to the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Abrahamson v. Ill. Dept. of Prof'l Regulation*, 153 Ill. 2d 76, 88 (1992). If the evidence in the record supports the Board's determination, it should be upheld by the trial court. *Rispoli v. Police Board of Chicago*, 188 Ill. App. 3d 622, 635 (1st Dist. 1989). The sole function of a reviewing court is to determine whether the agency's decision is contrary to the manifest weight of the evidence. *Board of Regents of Regency Universities v. Illinois Labor Relations Bd., et al.*, 208 Ill. App. 3d 220, 230 (4th Dist. 1991).

Analysis

The Board's Findings of Fact Were Not Against the Manifest Weight of the Evidence

Owens claims that the Board's findings were clearly erroneous, that the Board demonstrated undue bias, violated her right to due process, and that the evidence did not support the findings. Owens argues that, instead, the record shows that the Bloomington Police made a mistake in arresting Owens, and that she did not violate any law, but was the victim of overzealous police officers and racism.

The Board found Owens guilty of violating Count 1, violation of any law or ordinance. Owens argues that the record does not show that Owens violated any law. However, the Board heard testimony from three Bloomington police officers that Owens engaged in abusive, loud, and boisterous conduct, which could have aroused anger and resentment in others, qualifying as disorderly conduct under the applicable Minnesota statute. Minnesota statute 609.72.1. Her refusal to tell the officers her name and date of birth led to her arrest for interfering with a peace officer, although that charge was dismissed. The Board found there was a preponderance of the evidence that Owens had violated Minnesota statute 609.72.1 (Disorderly Conduct). Though the Board chose to believe the Bloomington police officers' testimony over that of Owens and her witnesses, it is the function of the Board to hear and weigh the evidence, and a reviewing court does not reweigh the evidence or substitute its judgment for that of an administrative agency. *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill.2d 497, 534 (2006).

Importantly, Owens pleaded guilty to the charge of disorderly conduct. Owens does not contend that her guilty plea was the product of coercion or that it was involuntary for any reason. Rather, Owens challenges the circumstances of her arrest, arguing that there was no probable cause or any justification under the Fourth Amendment for her arrest. Illinois law, however, is clear that guilty pleas are judicial admissions. *Spircoff v. Stranski*, 301 Ill. App.3d 10, 15 (1st Dist. 1998). Use of a guilty plea is admissible as an admission against interest. *Id.* Thus, Owens' guilty plea to the charge of disorderly conduct is an admission of guilt concerning the charged criminal offense. The lawfulness of Owens' arrest is of no consequence in these proceedings because she herself judicially admitted that she was guilty of the charged offense of disorderly conduct. Moreover, even in criminal court, a finding that a constitutional amendment has been violated does not result in a finding of "not guilty". Instead, the usual remedy is the

application of the exclusionary rule, *i.e.* the evidence seized in violation of the Constitution is suppressed. The State then determines whether it has sufficient evidence to proceed; if not, the State asks for a *nolle prosequi*. Under no circumstances does a court enter a finding of "not guilty" merely because it has found that the defendant's constitutional rights were violated.

Though Owens testified that she did not fight the charges in Minnesota because she lived in Chicago and did not have the money to do so, the fact remained that she entered a free and voluntary plea of guilty to a criminal offense. Certainly, an officer with 21 years' experience who is (or should be) familiar with the Rules governing officer conduct would understand the potential ramifications of a guilty plea; yet, Owens pleaded guilty without being coerced to do so by anyone. Moreover, Owens was gainfully employed at the time of the plea—the notion that she could not afford to travel to Bloomington, Minnesota to contest a criminal charge while being aware of the serious consequences a conviction would carry could be properly rejected by the Board. Based on the record, the Board's finding of guilt on Count I was not contrary to the manifest weight of the evidence.

Rule 2 prohibits any action or conflict which impedes the Department's policy or goals, or brings discredit upon the Department. Owens' actions brought discredit upon the Chicago Police Department and damaged the relationship between it and the Bloomington Police Department. The video evidence along with the testimony of the members of the Bloomington Police Department establishes that Owens was uncooperative and disrespectful to the Bloomington officers. Her comments to Arbuckle included: "I'm a police officer, duh;" "I hope you sleep real good for this one. Please don't come to Chicago;" and "you wouldn't last a day, wouldn't last a week with the real police." The last comment in particular is a taunting, disrespectful put-down of a police officer who was discharging his duties.

Rule 8 prohibits the maltreatment or disrespect of any person. The Board found a preponderance of the evidence that, based on the video and the credible testimony of the Bloomington officers, Owens made disrespectful comments while handcuffed in the squad car. The Board found these comments to be a violation of Rule 8. Although Owens argues that Owens did not show disrespect to any individual, the Board's finding is not contrary to the manifest weight of the evidence, and is supported by the video and credible testimony of the officers.

Owens testified that she did not believe she was intoxicated that night. R. at 210. However, Detective Arbuckle testified that Owens showed signs of alcohol intoxication. R. at 193. He could smell alcohol on her breath; her eyes were bloodshot and watery. *Id.* She was slurring her speech and unsteady on her feet. *Id.* She was loud and defiant. R. at 195. The other officers also testified to their observations which led them to believe that Owens was intoxicated. Based on this testimony, the Board found there was a preponderance of the evidence that Owens was intoxicated that night, in violation of Rule 15. The Board was not obligated to accept Owens' testimony that she only had three drinks starting at the birthday party for her sister-in-law up until her arrest (from approximately 8 p.m. to 2 a.m.). Though Owens argues that the results of the forced breathalyzer test should not be considered due to the violations of the Fourth Amendment, the Board decided that it would not consider the results of the breathalyzer and was basing its ruling on Rule 15 solely upon the credible testimony of the Bloomington police officers regarding their observations of her that led them each to separately conclude that Owens was intoxicated. The Board's finding was not contrary to the manifest weight of the evidence.

Owens testified that she failed to submit a "To/From" report to her supervisor. R. at 150. Rule 20 requires Chicago Police officers to immediately submit a written report that any member, including self, is under investigation by another law enforcement agency. Owens argues that, since Owens never should have been arrested, the Department should not have charged her with any violations stemming from that arrest, including her violation of Rule 20. However, the validity of the arrest does not change Owens' obligations under Rule 20. Whether or not the arrest was valid, Owens was still required under Department rules to submit a written report. Owens' admission that she failed to file such a report establishes by a preponderance of the evidence that she violated the rule.

The Board also rejected Owens' defense that she was a victim of racial profiling by the Bloomington Police. Notably, there is no evidence that Owens ever filed a lawsuit against the Bloomington Police Department based on this incident. Moreover, as stated above, she pleaded guilty to the offense of disorderly conduct. Owens argues in her Reply Brief that she did not want to "further subject [herself] to a system that has already discriminated against [her]" and therefore she did not pursue a civil rights lawsuit or go to trial on the criminal case. Owens, however, presented no proof that the prosecutor, the criminal court judge or a federal district

court judge (who would have presided over a civil rights lawsuit had she chosen to file such a lawsuit) was prejudiced or that she could not be fully and fairly heard.

Though Owens introduced United States Census Bureau statistics in support of her theory, these statistics were over five years old and do not take into account that the hotel at which she was arrested is located next to the Mall of America and is therefore host to numerous visitors and guests. Additionally, the Board found that Owens' assertion was not supported by the evidence; rather, the evidence that the Board found to be credible supported that Owens was arrest for her conduct, not her race. The Board pointed out the evidence in support of its finding; namely, the testimony from the officers that once they learned she was a Chicago Police Officer they wanted to "cut her a break" and "unarrest her", but her conduct continued to be combative and uncooperative. The Board also pointed out that some of her abusive behavior was captured on video and was stipulated to by the parties. One of the stipulations was to the testimony of Sergeant Ratzloff of the Bloomington Police Department who would testify that he spoke to Owens while she was in the back seat of the squad car outside the hotel. Owens refused to give her name to Ratzloff and was argumentative. Owens also stated that there were other ways to figure out her identity, and when asked what she meant, she stated, "fingerprint me, take me to the station." (Stip. #3) R. at 247-48. As there is evidence in the record fairly supporting the Board's determination, the Board's findings are not against the manifest weight of the evidence.

The Board's Recommendation of Discharge Was Not Arbitrary and Capricious

The second step in reviewing an agency's decision to discharge is to determine if the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge exists. *Carrigan*, 121 Ill. App. 3d at 308. The Illinois Supreme Court has defined "cause" as

> some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as good cause for his not longer occupying the place.
>
> *Walsh v. Board of Fire & Police Comm'rs*, 96 Ill. 2d 101, 105 (1983) (*quoting Fantozzi v. Board of Police & Fire Comm'rs*, 27 Ill. 2d 357, 360 (1963)).

An administrative tribunal's finding of cause for discharge commands the court's respect, and is to be overturned only if it is arbitrary and unreasonable, or unrelated to the needs of the service. *Id.* Unlike agency findings of fact, determinations of cause are not *prima facie* true and correct,

and are subject to judicial review. *Christenson v. Board of Fire & Police Comm'rs*, 83 Ill. App. 3d 472, 476 (1980). It remains the function of reviewing courts to determine if the charges are so trivial as to be unreasonable and arbitrary, if the agency acted on evidence that tended to fairly sustain the charges, and if its decision is related to the requirements of the service. *Id.*

Owens argues that the penalty of dismissal is not justified by the evidence. Owens presents evidence that very few Chicago Police officers have been terminated for drug and alcohol related violations, or for commission of crimes. Owens also cites numerous cases where the appeals courts have overturned agency decisions to discharge. *See Massingale v. Police Bd. of Chicago*, 140 Ill. App. 3d 378 (1st Dist. 1986) (overturning the discharge of an officer who drove drunk and lied to investigators); *Kirsch* 55 Ill. App. 3d 1042 (overturning the discharge of an officer who was drunk and disorderly at O'Hare airport); *Styck v. Iroquois County Sheriff's Merit Commission*, 253 Ill. App. 3d 430 (3rd Dist. 1994) (overturning the discharge of an officer for speeding and loudly quarreling with his ex-wife in public); *Washington v. Civil Service Commission of the City of Evanston*, 98 Ill. App. 3d 49 (1st Dist. 1981) (reducing from 29 days to 5 days the suspension of an officer who solicited sex from a suspect under arrest). Owens argues that, since she was found not guilty of the more serious Rule 14 violation, and because her only crime was refusing to give her name to the Bloomington officers, there is insufficient cause to discharge. Owens speculates, without foundation, that the Department may wish to discharge Owens because she is on permanent light duty.

Owens cites cases where courts reversed discharge decisions for police officers whose conduct was much worse than Owens'. However, an administrative tribunal's finding for cause may be considered inappropriate or arbitrary when officers receive grossly disparate sanctions in a completely related case. *Wilson v. Board of Police & Fire Comm'rs*, 205 Ill. App. 3d 984, 992 (1st Dist. 1990). The leading case on the issue of comparing discipline meted out by an administrative tribunal is *Launius v. Board of Fire & Police Comm'rs*, 151 Ill.2d 419 (1992). Both sides cite *Launius*. In *Launius*, the supreme court ruled that, "[a]n administrative tribunal's finding of 'cause' for discharge may be considered arbitrary and unreasonable when it is compared to the discipline imposed in a completely related case." *Id.* at 441-42. The supreme court also noted, "cause for discharge can be found regardless of whether other employees have been disciplined differently." *Id.* at 442. There is no completely related case to compare this one to, and the Court is not bound by judicial review of unrelated cases.

In making sanctions determinations, the Court may not consider whether it would have given a more lenient sentence. *Wilson,* 205 Ill. App.3d at 992. The Court may only decide if the Board acted arbitrarily by selecting a sanction that was inappropriate or unrelated to the needs of the service. *Id.* Illinois courts have recognized that police departments, as paramilitary organizations, require disciplined officers to function effectively, and have accordingly held that the promotion of discipline through sanctions for disobedience of rules, regulations and orders is neither inappropriate nor unrelated to the needs of a police force. *Siwek v. Police Bd.*, 374 Ill. App. 3d 735, 738 (1st Dist. 2007). An officer's violation of a single rule has long been held to be a sufficient basis for termination. *Id.* In this case, the Board's findings of fact show violations of multiple rules. Owens violated the law by acting in a boisterous and disorderly manner, and she was intoxicated, refused to cooperate with law enforcement and used demeaning language, refused to take a breath alcohol test until ordered to do so by her supervisor, then failed to submit a written report of the incident. Owens has a previous disciplinary history arising from acts of serious misconduct which includes two suspensions, one for 7.5 months and the other for 10 days. The Board's decision to dismiss Owens is not arbitrary, unreasonable, or unrelated to the needs of the service, especially in light of Owens' previous disciplinary record.

The decision of the Police Board is affirmed.

This is a final Order disposing of all litigation in this matter.

DATE: July 18, 2016

ENTERED
JUDGE KATHLEEN M. PANTLE-1775
JUL 18 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Kathleen M. Pantle